

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING #97-57**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Whether a foreign corporation, whose only activity in Tennessee and only connection with Tennessee is its limited partnership interest in a Tennessee partnership doing business both within and without Tennessee, has sufficient nexus in Tennessee to subject it to Tennessee corporate franchise, excise taxes.

**SCOPE**

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

**FACTS**

The taxpayer (Taxpayer) is incorporated and commercially domiciled in Tennessee. It owns 100% of the stock of a newly formed subsidiary (Sub 1). The Taxpayer is engaged principally in marketing and distributing [TYPE OF PRODUCT] products throughout the United States. The Taxpayer anticipates expanding the creative marketing/advertising segment of its business and is considering conducting these operations through a limited partnership.

The limited partnership will be formed under the laws of Tennessee and will operate within and without the state of Tennessee. The Taxpayer and Sub 1 will be the sole partners in the partnership. The Taxpayer will be a 1% general partner and Sub 1 will be a 99% limited partner.

Among other things, the partnership will publish and distribute promotional materials for the [TYPE OF INDUSTRY] industry. Initially, the principal source of the partnership's revenue will be the sale of advertising. Sub 1 is not incorporated in Tennessee and will not obtain a certificate of authority from the Tennessee Secretary of State to transact business in Tennessee. Sub 1 will maintain its commercial domicile in Delaware and be

solely a passive investor in the partnership. Sub 1 will exercise no power or control over the partnership and will not participate in the partnership's management in any way.

### **QUESTIONS PRESENTED**

1. Will Sub 1's ownership in the limited partnership create sufficient nexus in Tennessee to subject it to Tennessee franchise, excise taxes?
2. In the event Sub 1 is subject to Tennessee franchise, excise taxes, how will it report its share of the Tennessee partnership's business operations on its Tennessee franchise, excise tax return?

### **RULINGS**

1. No.
2. Since Sub 1 is not subject to Tennessee franchise, excise taxes, it will not be required to file a Tennessee franchise, excise tax return.

### **ANALYSIS**

#### **SUB 1 IS NOT SUBJECT TO TENNESSEE FRANCHISE, EXCISE TAXES AND IS NOT REQUIRED TO FILE A TENNESSEE FRANCHISE, EXCISE TAX RETURN**

For many years the Tennessee Department of Revenue has taken the position that a foreign corporate limited partner is not doing business in Tennessee so as to be subject to Tennessee corporate franchise, excise taxes if its activities are limited as follows:

- (1) The corporate limited partner's only business activity in Tennessee is the holding of a limited partnership interest in a partnership(s) with nexus in Tennessee; and
- (2) The corporate limited partner exercises no power, management or control over the partnership(s) except such powers or capacities outlined in T.C.A. § 61-2-302 which limited partners may exercise without participating in the management or control of a partnership.

A foreign corporate limited partner's involvement in a partnership doing business in Tennessee appears to be similar to the interest of a foreign corporation whose only Tennessee activity is that of a stockholder in a corporation doing business in Tennessee. Neither the limited partner nor the stockholder have the right to participate in the management or control of the partnership, or corporation, as the case may be, and thus

neither are said to be “doing business” in Tennessee so as to be subject to corporate franchise, excise taxes imposed by T.C.A. §§ 67-4-901 et seq. and 67-4-801 et seq. The Department’s policy with regard to this matter considers a foreign corporate limited partner in a partnership having nexus in Tennessee as having only a passive investment in Tennessee just as does a foreign corporate stockholder in a corporation having nexus in Tennessee. Such a passive investment would not create sufficient tax nexus for Tennessee to impose corporate franchise, excise taxes.

It would be possible for a foreign corporate limited partner in a partnership having nexus in Tennessee to engage in other transactions in Tennessee, either with the limited partnership itself, or with other parties, which would result in sufficient Tennessee minimum contacts to subject it to corporate franchise, excise taxes. For example, such a foreign corporate limited partner which also has a general partnership interest in a partnership with Tennessee nexus, or which has Tennessee activities which are not protected by Title 15 U.S.C.A. §§ 381-384, would be subject to Tennessee franchise, excise taxes. When a foreign corporate limited partner has nexus in Tennessee due to activities other than its limited partnership interest, T.C.A. §§ 67-4-910 and 67-4-811 require inclusion of the foreign corporation’s share of partnership property, payroll and sales in its apportionment formula.

Sub 1 is not incorporated in Tennessee and has no Tennessee certificate of authority to transact business or conduct affairs in Tennessee. It is neither legally nor commercially domiciled in Tennessee. Sub 1 states that it is only a passive investor in the Tennessee partnership and, as such, will not exercise any power or control over the partnership and will not participate in the partnership’s management in any way.

Under the facts presented, Sub 1 will not be subject to Tennessee franchise, excise taxes and will not be required to file a franchise, excise tax return.

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Arnold B. Clapp, Senior Tax Counsel

**APPROVED:** 

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Ruth E. Johnson, Commissioner

**DATE:** 12-23-97